

# **CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM**

## **BILL ANALYSIS**

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### **Senate Bill 1746**

**Senator Polanco (As amended 5/1/02)**

### **Position:**

**No Position**

### **Proponents:**

**Author (Sponsor), City of Garden Grove, City of Riverside,  
City of Sacramento, City of Santa Ana, Cordoba Corporation**

### **Opponents:**

**None known**

## **SUMMARY**

Senate Bill 1746 makes a statement of legislative intent that an elected official of a local agency appointed to a public employee retirement board does not have an inherent conflict of interest.

## **LEGISLATIVE HISTORY**

Proposition 162, the California Pension Protection Act of 1992, a constitutional amendment approved by the voters, grants the board of a public employee retirement system sole and exclusive authority over investment decisions and administration of the system, requires the board to administer the retirement system so as to assure prompt delivery of benefits to participants and beneficiaries. Specifies the delivery of benefits to participants and beneficiaries and the board's duty to participants and beneficiaries takes precedence over any other duty. The measure also contains findings and declarations relating to the purpose and intent of the constitutional amendment.

## **SUMMARY OF CHANGES**

The May 1, 2002 amendments delete changes to the Teachers' Retirement Law (TRL) that would have permitted an elected official of a local agency to be appointed to the Teachers' Retirement Board (Board) if he or she also met the requirements for appointment as an officer of a bank or savings and loan institution, and also would have eliminated the requirement that the banker's investment experience be professional experience. Instead, SB 1746 is now an uncodified statement of legislative intent that allows elected officials to serve on the Board of any public employee retirement system within California.

## **CURRENT PRACTICE**

Under existing law, the California State Teachers' Retirement System's (CalSTRS) Defined Benefit (DB) Program and the Cash Balance (CB) Benefit Program are administered by the 12-member Board.

Two of the twelve Board members must be CalSTRS members who are classroom teachers in kindergarten or grades 1 through 12, and another member must be a retired member of the System. A fourth member must be a school board member or a community college trustee. All four of these members are appointed by the Governor to 4-year terms from a list submitted by the Superintendent of Public Instruction. Another member of the Board is required to be a community college instructor with expertise in business or economics or both, and is appointed by the Governor for a four-year term from a list submitted by the Board of Governors of the California Community Colleges.

One member of the Board is required to be an officer of a life insurance company and one member of the Board is required to be an officer of a bank or savings and loan institution. The seat on the Board reserved for a bank or savings and loan officer has been vacant since November 1998. An eighth member of the Board represents the public. The Governor appoints these members for four-year terms, subject to confirmation by the Senate. The remaining four members, the Director of the Department of Finance, the Superintendent of Public Instruction, the Controller and the Treasurer, are on the Board by virtue of their state office.

## **DISCUSSION**

Senate Bill 1746 makes a finding that preventing a public official from serving on a public retirement system board because of a potential incompatibility of office can result in the loss of valuable expertise and public experience. The bill also makes a statement of legislative intent that:

- All qualified Californians are eligible to participate as a board member of a pension fund;
- Each nominee for a position on a retirement board be evaluated on the basis of his or her individual qualifications;
- Pension funds routinely monitor issues where questions of incompatibility may be present;
- Pension funds seek appropriate legal counsel to cure any potential clash between the two offices as implied by the doctrine of incompatibility of public offices.

The Senate policy committee analysis indicates that questions have been raised during the appointment process regarding the appointment of an officer of a bank or savings and loan institution to the Board that is also a local elected official. It has been suggested that the appointment of such an elected official may constitute a conflict of interest pursuant to the doctrine of incompatibility offices.

The author maintains that well-qualified people are denied membership on the Board only because they are public officials. He also believes that elected officials appointed to public retirement system boards should abstain from voting on matters that directly impact their elected jurisdiction.

According to staff in the Attorney General's office, conflict of interest standards primarily result from court judgments and are not necessarily found in statute. The doctrine holds that:

“Offices are incompatible if one of the offices has supervisory, auditory, or removal power over the other or if there would be any significant clash of duties or loyalties in the exercise of official duties. Only one potential significant clash of duties or loyalties is necessary to make offices incompatible. If the performance of the duties of either office could have an adverse effect on the other, the doctrine precludes acceptance of the second office. If the second office is accepted, such acceptance constitutes an automatic resignation from the first office (2002 WL 512491 (Cal A.G. Opinion 01-1007, April 3, 2002)).”

The doctrine does not apply, however, when provisions in law and approved statements of legislative intent allow or designate a public official to serve in another office. For example, the TRL specifies that the Controller, Treasurer, Superintendent of Public Instruction, and Director of the Department of Finance shall serve on the Board.

The statement of legislative intent contained SB 1746 attempts to shield an elected official serving on the Board from future lawsuits that allege an inherent conflict of interest and permits them to retain their elected office while a member of the Board. Although the doctrine of incompatibility of offices does not permit a single significant potential clash of duties or responsibilities to occur, this measure allows multiple potential conflicts. It is almost certain that multiple conflicts would arise for elected officials appointed to the Board who also represent jurisdictions or agencies that employ CalSTRS members and participants. For example, a member of a county board of supervisors is considered the employer of the employees in the county office of education, a member of a city council with oversight duties for a city school district is considered an employer of the employees of the district.

It is unlikely that the provisions of SB 1746 could be used as a shield to protect Board members that place the interests of their elected office first, because by doing so, these elected officials could potentially breach their fiduciary duty to act in the interests of plan participants and beneficiaries pursuant to Proposition 162. However, by specifying that it is the duty of a retirement system to monitor and prevent conflicts of interest for members of the Board that hold incompatible offices, this measure exposes CalSTRS and the Teachers' Retirement Fund to additional liability for the conduct of this subset of Board members.

**FISCAL IMPACT**

Benefit Program Costs – None

Administrative Costs – None

**BOARD POSITION**

No Position. As a matter of policy, the Board does not take positions on legislation affecting its selection or composition.